

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

|                                  |   |                               |
|----------------------------------|---|-------------------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) |                               |
|                                  | ) |                               |
| <b>Plaintiff,</b>                | ) |                               |
|                                  | ) |                               |
| <b>v.</b>                        | ) | <b>Case No. CR-13-019-RAW</b> |
|                                  | ) |                               |
| <b>SAMMY WAYNE DAVIS,</b>        | ) |                               |
|                                  | ) |                               |
| <b>Defendant.</b>                | ) |                               |

**ORDER**

Before the court is the objection of the defendant regarding the Report and Recommendation as to defendant's motion to suppress. The government has also filed a response and defendant a reply. The court has reviewed the record. The court concludes the thorough analysis of the Magistrate Judge should be affirmed.

The Tenth Circuit has held that omission of the confidential informant's criminal record was not material because the affidavit included information about his use and sales of cocaine. *United States v. Avery*, 295 F.3d 1158, 1167-68 (10<sup>th</sup> Cir.2002). Here, the affidavit reflects that the informant Hargrove was in jail and also that Hargrove had committed a criminal act. Moreover, Hargrove is named in the affidavit. *See United States v. Brown*, 496 F.3d 1070, 1075 (10<sup>th</sup> Cir.2007)(noting that "[a] known informant[] . . . may be held accountable if his allegations turn out to be fabricated")(quotations omitted); *United States v. Couch*, 367 F.3d 557, 560-61 (6<sup>th</sup> Cir.2004). *See also* 2 LaFave, Search and Seizure, §3.3(c)("It is fair to say, therefore, that there is much more reason to conclude that veracity

is shown when the informant comes forward as an affiant or when his identity is disclosed in the affidavit or upon the motion to suppress.”) (footnotes omitted).

It is the order of the court that the motion of the defendant to suppress (#22) is hereby denied. The Report and Recommendation is adopted and affirmed.

**ORDERED THIS 23rd DAY OF APRIL, 2013.**

**Dated this 23<sup>rd</sup> day of April, 2013.**

A handwritten signature in cursive script, reading "Ronald A. White", written over a horizontal line.

Ronald A. White  
United States District Judge  
Eastern District of Oklahoma